

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOSE ANGEL GUERREO GALINDO,)	
)	
Petitioner,)	
)	1:18CV1001
v.)	1:11CR124-2
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, has submitted a Motion (Docket Entry 169) to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. This Motion cannot be further processed because court records reveal that Petitioner previously attacked the same conviction and sentence in a prior § 2255 motion [No. 1:14CV176]. Consequently, Petitioner must move in the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current Motion, as required by 28 U.S.C. § 2255 and 28 U.S.C. § 2244. See AO 243 (MDNC 10/07), Instructions, ¶ (4) (copy enclosed). Because of this pleading failure, this particular Motion should be filed and then dismissed.¹

¹ At certain points, Petitioner lists the civil case number from his prior § 2255 Motion and makes statements that indicate he may be trying to amend, continue, or reargue that case in some fashion. Petitioner cannot simply continue or reargue his prior case, which the Court closed after entry of judgment. Further, in order for the Court to consider a motion to amend after the entry of judgment, the judgment must first be
(continued...)

IT IS THEREFORE RECOMMENDED that this action be filed and then dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the court of appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS THEREFORE ORDERED that the Clerk send Petitioner a copy of this Recommendation, instruction forms for filing § 2255 motions in this Court and Motions for Authorization in the court of appeals, and four copies of § 2255 motion forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2255 motion which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

This, the 4th day of December, 2018.

/s/ L. Patrick Auld
L. Patrick Auld
United States Magistrate Judge

¹(...continued)
reopened under Fed. R. Civ. P. 59 or 60. Laber v. Harvey, 438 F.3d 404, 427-28 (4th Cir. 2006). Rule 59 is not applicable because it deals with altering or amending a judgment after trial, but Rule 60(b), which sets out the reasons why a final judgment can be set aside, could potentially apply. However, Petitioner supplies absolutely no basis for reopening his prior Motion under Rule 60.